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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

R-124

\+ **W.P.(C) 722/2003**

SOFEMA S.A. FRANCE ..... Petitioner

Through: Mr Parag P. Tripathi, Senior Advocate with Ms Neelima Tripathi, Mr Kunal Bahari and Ms D.D. Majumdar, Advocates.

versus

DY. DIRECTOR OF INCOME TAX AND ANR. ..... Respondents

Through: Mr Ashok Manchanda, Senior Standing Counsel with Mr Vibhooti Malhotra, Junior Standing Counsel and Mr Aamir Aziz, Advocate.

AND

R-125

\+ **W.P.(C) 735/2003**

SOFEMA S.A. FRANCE ..... Petitioner

Through: Mr Parag P. Tripathi, Senior Advocate with Ms Neelima Tripathi, Mr Kunal Bahari and Ms D.D. Majumdar, Advocates.

versus

DY. DIRECTOR OF INCOME TAX AND ANR. ..... Respondents

Through: Mr Ashok Manchanda, Senior Standing Counsel with Mr Vibhooti Malhotra, Junior Standing Counsel and Mr Aamir Aziz, Advocate.

AND

R-126

\+ **W.P.(C) 765/2003**

SOFEMA S.A. FRANCE ..... Petitioner
Through: Mr Parag P. Tripathi, Senior Advocate with Ms Neelima Tripathi, Mr Kunal Bahari and Ms D.D. Majumdar, Advocates.

versus

DY. DIRECTOR OF INCOME TAX AND ANR. ..... Respondents
Through: Mr Ashok Manchanda, Senior Standing Counsel with Mr Vibhooti Malhotra, Junior Standing Counsel and Mr Aamir Aziz, Advocate.

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE VIBHU BAKHRU

<u>O R D E R</u>

% **21.03.2016**

1. These three petitions filed by the Petitioner, SOFEMA S.A. France, challenge three notices dated 18/25th January, 2002 issued by the Deputy Director of Income Tax under Section 148 of the Income Tax Act, 1961 (hereafter 'the Act') seeking to reopen the assessment for the Assessment Years (AYs) 1995-96, 1999-2000 and 2000-01.

2. The background to the present petitions is that the Petitioner obtained permission from the Reserve Bank of India under Section 29(2)(a) of the Foreign Exchange Regulation Act, 1973 (FERA) on 25th March 1976 to maintain a Technical Liaison office in New Delhi. While the said permission was renewed from time to time, for AY 1997-98, the Petitioner received a notice under Section 142(1) of the Act on 17th January 2000 requiring it to

file a return on or before 4th February 2000. Pursuant to the aforementioned notice, the petitioner filed a 'Nil' return for AY 1997-98 on 24th February 2000 stating that it had no business in India.

3. The petitioner was served with the notice under Section 143(2) of the Act by the Assessing Officer (AO) who thereafter proceeded to frame an assessment by an order dated 31st March, 2000 computing the taxable income at Rs. 20 crores with a tax demand of Rs. 25 crores. These proceedings culminated in an order of the Commissioner of Income Tax (Appeals) dated 30th July, 2002 for AY 1997-98 whereby the assessment order was set aside and the petitioner's contention, that it was not having anything more than a liaison office in India, was accepted.

4. The appeal of the Revenue against the aforementioned order was dismissed by the Income Tax Appellate Tribunal ('ITAT') on 5th May, 2006. The appeal thereafter, filed by the Revenue being ITA 1764/2006 under Section 260A of the Act for AY 1997-98, was dismissed by this Court on 18th December 2006. The said order of the High Court has now been affirmed by the Supreme Court by an order dated 26th August 2008 dismissing the Revenue's appeal being Civil Appeal No. 5260/2008.

5. It was during the pendency of the aforementioned matter that the impugned notice came to be issued under Section 148 of the Act for reopening the assessment for the aforementioned AYs. The base order being the one for AY 1997-98 and the said assessment order having been set aside with the Supreme Court having affirmed the position that the petitioner does

not have anything more than a liaison office, the very basis on which the impugned notices were issued does not stand scrutiny.

6. Consequently, the Court quashes the impugned notices dated 18/25th January 2002 issued under Section 148 of the Act and all proceedings consequent thereto. The writ petitions are accordingly allowed.

S. MURALIDHAR, J

VIBHU BAKHRU, J

MARCH 21, 2016
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